

BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

GERRY STAMPER,

Appellant,

v.

WASHINGTON STATE UNIVERSITY,

Respondent.

) Case No. SUSP-04-0012

)
) FINDINGS OF FACT, CONCLUSIONS OF
) LAW AND ORDER OF THE BOARD

I. INTRODUCTION

1.1 **Hearing.** This appeal came on for hearing before the Personnel Appeals Board, BUSSE NUTLEY, Vice Chair, and GERALD L. MORGEN, Member. The hearing was held at Washington State University, French Building, Conference Room 136, Pullman, Washington, on January 26, 2005.

1.2 **Appearances.** Appellant Gerry Stamper appeared *pro se*. Donna J. Stambaugh, Assistant Attorney General, represented Respondent Washington State University.

1.3 **Nature of Appeal.** This is an appeal from a disciplinary sanction of a six-day suspension for neglect of duty, insubordination, and violation of university policies. Respondent alleges Appellant used a state vehicle to conduct personal business.

II. FINDINGS OF FACT

2.1 Appellant Gerry Stamper is a permanent employee for Respondent Washington State University (WSU). Appellant and Respondent are subject to Chapters 41.06 and 41.64 RCW and the rules promulgated thereunder, Titles 251 and 358 WAC. Appellant filed a timely appeal with the Personnel Appeals Board on March 11, 2004.

2.2 Appellant has been employed by WSU for approximately 20 years. Appellant occasionally attends meetings with employees to represent them on possible disciplinary actions. Appellant testified his attendance at these pre-disciplinary meetings has not been in an official capacity as a union representative but rather that he attends as a "friend."

2.3 Appellant has been the subject of previous discipline. By letter dated June 29, 2000, Lawrence E. Davis, Executive Director of Facilities Operations, suspended Appellant for three days for neglect of duty, inefficiency and insubordination for spending work time on personal business by assisting other employees on disciplinary issues and preparing for their pre-disciplinary meetings. Mr. Davis warned Appellant that further incidents of similar behavior could result in more serious disciplinary action.

2.4 On August 28, 2002, Mr. Davis provided Appellant with a memo entitled "Guidelines Regarding Personal Activities." The memo, in relevant part, informed Appellant that his role in providing assistance to other employees was not a protected activity. Mr. Davis directed Appellant to conduct these activities during non-duty hours and to request permission from his supervisor to take annual leave or compensatory time in advance of such meetings. Mr. Davis further informed Appellant that providing assistance to other employees was:

1 ... considered personal in nature and may not involve the use of state resources
2 (vehicles, computer, copiers, telephones, etc.). University vehicles may not be
3 used to travel to and from these appointments. If on the job site, you may either
4 walk from your assigned place of duty to your appointment or turn in the
5 University vehicle to the shop's parking lot and take private transportation to the
6 appointment, just as any other employee departing from duty for a personal
7 appointment. ...

8 2.5 Appellant admits his awareness of WSU business policies 20.35 and 20.37 that prohibit the
9 use of University property for personal gain or for purposes unrelated to official University
10 activities. Policy 20.37 allows for some occasional and limited personal use of state resources, but
11 only if all of the following conditions are met: the use is not specifically prohibited; it results in
12 little or no cost to the state; does not interfere with official duties; the use is brief in duration; occurs
13 infrequently; and is the most effective use of time or resources; does not disrupt or distract from
14 University business; does not disrupt other University employees; and does not compromise the
15 security or integrity of University information or software.

16 2.6 On February 5, 2004, Appellant informed his supervisor, Tom Burritt, that he had a meeting.
17 The meeting was unrelated to Appellant's work and was for the purpose of assisting another
18 University employee during a meeting. That meeting was scheduled for noon at the University
19 Power Plant building. Appellant completed a leave request form indicating he was taking
20 compensatory leave beginning at 11:40 a.m. on February 5. Shortly prior to departing, Appellant
21 also asked Mr. Burritt to sign a vendor order form for the Moscow/Pullman Building Supply to
22 purchase lumber material for a University greenhouse project.

23 2.7 At approximately 11:30 a.m., Appellant departed his work site from Facilities Operations in
24 a University-owned truck, which he intended to use for loading and transporting the lumber from
25 the building supply store to the greenhouse. Although Appellant has several routes he could take
26 from Facilities Operations to the Moscow/Pullman Building Supply, he selected a route that is

1 slight shorter than the other routes but is typically more congested with pedestrian traffic. The route
2 Appellant selected took him past the Power Plant and on his way to pick up the lumber, Appellant
3 stopped at the Power Plant shortly before 11:40 a.m. to attend the noon meeting. Upon his arrival at
4 the Power Plant, Mr. Davis informed Appellant that the meeting did not involve a disciplinary
5 action and that he should not attend. Appellant left the Power Plant at noon, returned to the state
6 vehicle and proceeded to pick up the greenhouse supplies.

7
8 2.8 On February 10, 2004, Mr. Davis notified Appellant that he was holding a pre-disciplinary
9 meeting to discuss Appellant's suspected misconduct and allow him an opportunity to respond to
10 the charge that he misused state resources when he used a University vehicle for personal purposes.

11
12 2.9 On February 19, 2004, Mr. Davis met with Appellant and Appellant's representative,
13 Dwight Swanson. Mr. Swanson indicated that Appellant:

- 14 • used the University's pickup for state business only in order to pick up and
15 deliver materials to the greenhouse;
- 16 • was on state time and on official business until he parked the vehicle at the power
17 plant;
- 18 • asserted the route Appellant took was the shortest route to the Moscow/Pullman
19 Building Supply;
- 20 • was on his own time when he went to the meeting;
- 21 • upon departing the meeting, Appellant returned to the truck, went back on work
22 time and immediately picked up the materials and proceeded to the greenhouse.

23
24 2.10 After considering Appellant's responses to the charges, Mr. Davis was not persuaded that
25 Appellant presented any mitigating factors for his use of a state vehicle to attend a non-work related
26 meeting. Mr. Davis considered that he had previously given Appellant clear directives regarding
the expectations that he use no University resources for personal activities. Mr. Davis believed that
Appellant was provided a copy and should have understood the University's policies regarding the
use of state resources. Mr. Davis concluded that Appellant neglected his duty, was insubordinate

1 and willfully violated University policies when he used state resources to conduct personal
2 business. In determining the level of discipline, Mr. Davis reviewed Appellant's employment
3 record and his repeated misuse of state resources to conduct personal business. Mr. Davis
4 ultimately concluded a six-day suspension was the appropriate sanction.

5
6 2.11 By letter dated February 27, 2004, Mr. Davis notified Appellant he was suspended for six
7 calendar days from his position as a Maintenance Mechanic II effective March 9, 10, 11, 12, 16 and
8 17, 2004. Mr. David charged Appellant with neglect of duty, insubordination and willful violation
9 of University policies 20.35 and 20.37.

10
11 2.12 Appellant argues that his use of the University's vehicle was for business purposes. We
12 find, however, that although he did not attend the February 5 meeting, he clearly drove the vehicle
13 to the Power Plant for the purpose of conducting a non-University activity.

14 **III. ARGUMENTS OF THE PARTIES**

15 3.1 Respondent argues that Appellant understood the meeting on February 5, 2004, was not
16 state business related, and he should have known that he could not use the vehicle for the purpose of
17 traveling to the meeting. Respondent argues Appellant cannot mitigate his actions by claiming that
18 his use of the vehicle was for official business because the meeting site was on his way to the
19 lumber yard. Respondent disputes Appellant's assertion that he took the most direct route to the
20 meeting and asserts Appellant took the most difficult route to the lumber yard in order to justify his
21 use of the state vehicle to conduct personal business. Respondent acknowledges that the University
22 Policy allows some limited use of state resources for personal purposes; however, Respondent
23 asserts that in this case, Appellant was specifically prohibited from using state time and resources to
24 conduct unofficial activities. Respondent argues that under the facts and circumstances, including
25 Appellant's prior discipline for similar misconduct, a six day suspension is appropriate.
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1
2 3.2 Appellant asserts that he used his state vehicle for work purposes only and that the meeting
3 he went to attend was a state sanctioned meeting. Appellant asserts he was on approved leave at the
4 point he arrived at the Power Plant, asserts the guidelines from Mr. Davis indicated he could go
5 from a worksite to this type of meeting, and he asserts he took the shortest route to the Power Plant.
6 Appellant further argues that the University's policy allows for short or limited personal use of state
7 resources, such as use of state vehicle, as long as there is no cost to the University. Appellant
8 claims that his use of the pickup was within those criteria and there was no additional cost to the
9 state. Appellant argues the six-day suspension is excessive because he works 10-hour days and it
10 amounts to 60 hours without pay.

11 12 **IV. CONCLUSIONS OF LAW**

13 4.1 The Personnel Appeals Board has jurisdiction over the parties and the subject matter.
14

15 4.2 In a hearing on appeal from a disciplinary action, Respondent has the burden of supporting
16 the charges upon which the action was initiated by proving by a preponderance of the credible
17 evidence that Appellant committed the offenses set forth in the disciplinary letter and that the
18 sanction was appropriate under the facts and circumstances. WAC 358-30-170; WAC 251-12-
19 240(1); Baker v. Dep't of Corrections, PAB No. D82-084 (1983).
20

21 4.3 Neglect of duty is established when it is shown that an employee has a duty to his or her
22 employer and that he or she failed to act in a manner consistent with that duty. McCurdy v. Dep't
23 of Social & Health Services, PAB No. D86-119 (1987).
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1 4.4 Insubordination is the refusal to comply with a lawful order or directive given by a superior
2 and is defined as not submitting to authority, willful disrespect, or disobedience. Countryman v.
3 Dep't of Social & Health Services, PAB No. D94-025 (1995).

4
5 4.5 Willful violation of published employing agency or institution or Personnel Resources
6 Board rules or regulations is established by facts showing the existence and publication of the rules
7 or regulations, Appellant's knowledge of the rules or regulations, and failure to comply with the
8 rules or regulations. Skaalheim v. Dep't of Social & Health Services, PAB No. D93-053 (1994).

9
10 4.6 Although it is not appropriate to initiate discipline based on prior formal and informal
11 disciplinary actions, including letters of reprimand, it is appropriate to consider them regarding the
12 level of the sanction which should be imposed here. Aquino v. University of Washington, PAB No.
13 D93-163 (1995).

14
15 4.7 Respondent has proven by a preponderance of the evidence that Appellant misused state
16 resources when he used a state vehicle on February 5, 2004, to conduct personal business.
17 Appellant failed to provide any convincing reason for utilizing a state vehicle as transportation to a non-
18 work related meeting. Appellant's misconduct constitutes a neglect of his duty, a willful violation of
19 University policies and insubordination. Appellant received a written directive specifically prohibiting
20 him from using University vehicles as transportation to personal meetings and he willfully violated that
21 directive.

22
23 4.8 In determining whether a sanction imposed is appropriate, consideration must be given to
24 the facts and circumstances, including the seriousness and circumstances of the offenses. The
25 penalty should not be disturbed unless it is too severe. The sanction imposed should be sufficient to
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1 prevent recurrence, to deter others from similar misconduct, and to maintain the integrity of the
2 program. Holladay v. Dep't of Veterans Affairs, PAB No. D91-084 (1992).

3
4 4.9 In this case, Appellant was previously disciplined in the form of a suspension for using state
5 time to conduct personal business, and he was warned that future misconduct of a similar nature
6 would result in further disciplinary action. Respondent has met its burden of proving that a six-day
7 suspension is the appropriate sanction. Therefore, the appeal of Gerry Stamper should be denied.

8
9 **V. ORDER**

10 NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Gerry Stamper is denied.

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12 DATED this _____ day of _____, 2005.

13
14 WASHINGTON STATE PERSONNEL APPEALS BOARD

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16 _____
Busse Nutley, Vice Chair

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18 _____
Gerald L. Morgen, Member